IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3644 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANT CINEMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3644 of 1989
MR HEMANT S SHAH for Petitioner Nos. 1-2
MR PREMAL JOSHI, AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The petitioners have challenged the order of the Mamlatdar, Borsad, made on 18th April, 1989 at Annexure :B to the petition, holding that the petitioners who were running Janta Cinema were not entitled to the benefit of consolidated tax under Section 6 of the Gujarat Entertainment Tax Act, 1977. For this reason, permission which was granted on 15th February,1989, came to be revoked by the impugned order.

#. According to the petitioner, the petitioner owned a cinema theatre at village Asodar of Borsad taluka, which is run in the name and style of Vasant Cinema, for exhibition of films. The village, as per last census had 6,522 inhabitants. The cinema theatre was licensed under the Bombay Cinema Regulations Act and the Rules made thereunder, as "Janta Cinema" and necessary certificate was issued in that regard. The said Janta Cinema was started in the year 1988 and had claimed exemption in its first year as per the notification which was issued under Section 29 of the Gujarat Entertainment Tax Act, 1977. According to the petitioners, an application was made under Section 6 of the said Act for permission to pay consolidated tax from 27th January, 1989 and it was granted as per Annexure:A to the petition. However, under the impugned order at Annexure:B, the permission came to be revoked on the ground that since the Cinema was availing all the benefits of the notification under Section 29 of the Act, it could not simultaneously claim the other benefits of payment by the mode of consolidated tax payment envisaged by Section 6 of the Act.

#. The question whether owner of such Janta Cinema could avail of both the benefits namely the benefit of the notification of exemption under Section 29 of the Act and the beneficial mode of payment envisaged by Section 6, came to be considered by a Division Bench of this Court in Arman Cinema v. State of Gujarat and others reported in 39 (3) GLR 1836, in which the Court held that Sections 6 and 29 provided different modes of payment of entertainment tax and if general exemption was granted under Section 29 for the Janta Cinema, the proprietor was not entitled to pay any tax at all for the first year, therefore, there did not arise any question of consolidation for that year. For the second year also, the proprietor was liable to pay only 25% of the tax and for that year too, the question of consolidation may not arise for the reason that under the scheme of consolidation, the proprietor has to pay tax as if he is running shows for all the days in a week and it is deemed

that the cinema house is running with full capacity and the petitioners would be liable to pay higher amount by way of tax (see para 10 of the judgment). The Court held that the benefit of general exemption granted under Section 29 for Janta Cinema theatre was subject to certain conditions. As per the general exemption notified under Section 29, a proprietor was not bound to pay tax for the first year and tax was gradually increased and from the 5th year, he was bound to pay full tax. The Court took note of clause (4) of the conditions of availing of benefit of consolidation which provided that even if a film was exempted from payment of entertainment, no concession would be granted on that count. It was observed that if other exemptions were available to the proprietor, the benefit of consolidation cannot be granted. The Court held that on perusal of two exemptions, it appeared that there were two separate modes of payment of entertainment tax and the benefits under Sections 6 and 29 were of different nature. In para 11 of the judgment, the Court found that the petitioners were not entitled to the benefit under Section 6 and also general exemption granted under Section 29 of the Act at the same time.

#. In this view of the matter, the impugned order which has been made on the ground that the petitioner, who is a proprietor of Janta Cinema, could not avail of both the benefits, namely under Section 6 as well as under Section 29 of the said Act at the same time, cannot be faulted with and the ground mentioned therein gets full support from the aforesaid decision of this Court. There is, therefore, no substance in this petition and it is rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]
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